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July 12, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

**RE: Docket No. 96-128; In the Matter of Implementation of the Pay Telephone
Reclassification and Compensation Provisions of the Telecommunications Act of 1996**

Dear Secretary:

Enclosed are an original and fifteen (15) copies of **REPLY COMMENTS OF THE
MISSOURI PUBLIC SERVICE COMMISSION** for filing in the above-referenced matter along
with an electronic version on disk.

Please file stamp the extra copy for return to our office. Thank you for your attention to
this matter.

Sincerely,

Eric B. Witte
Assistant General Counsel
573-751-4140

EBW/bsl
Enclosures

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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FILED

JUN 15 1996

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
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Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

REPLY COMMENTS OF THE MISSOURI PUBLIC SERVICE COMMISSION

In a Notice of Proposed Rule Making (hereinafter "NPRM") released on June 6, 1996, the Federal Communications Commission ("FCC") requested comments on a number of issues concerning the pay telephone reclassification and compensation provisions of the Telecommunications Act of 1996 ("1996 Act"). The Missouri Public Service Commission ("MoPSC") submits the following reply comments on two issues: local rates for pay telephone calls and public interest pay telephones.

In summary, the MoPSC recommends that the States retain discretion regarding both local payphone telephone rates and public interest payphones ("PIPs"). The FCC lacks jurisdiction to set local payphone rates. Moreover, any national rate would frustrate, not help, the 1996 Act's goal of fair compensation. States have experience in encouraging PIPs, and providing funding for them. The MoPSC does not regard a national PIP program as necessary or appropriate. To the extent that the FCC mandates additional PIPs, it should identify additional sources of funding from the interstate jurisdiction.

I. The States Should Retain Discretion in Setting Local Coin Telephone Rates

The 1996 Act directs the FCC to prescribe regulations that “ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone...” (§ 276(b)(1)(A)) and that “discontinue . . . payphone subsidies...” (§ 276(b)(1)(B)). The FCC proposes three options for achieving these ends: 1) establish a national rate for local payphone calls, 2) establish national guidelines for states to set payphone rates, or 3) establish a procedure permitting parties to petition the FCC to review state-established rates. NPRM at ¶¶21-22. The MoPSC recommends the third option. *Accord* Initial Comments of the State of Maine Public Utilities Commission, the State of Montana Public Service Commission, the State of New Mexico State Corporation Commission, the State of Vermont Public Service Board and Department of Public Service (“the Commenting States”) at 1-9.

The MoPSC opposes the proposal of establishing a national rate for local payphone calls for both legal and policy grounds. As a matter of law, while § 276 gives the FCC jurisdiction with respect to compensation, it does not give the FCC jurisdiction over local rates. To the contrary, 47 U.S.C. § 152(b) provides that “nothing in this chapter shall be construed to apply or give [the FCC] jurisdiction with respect to [intrastate matters]” Few things are as inherently an intrastate issue as the rate for a **local** coin telephone call.

As a matter of policy, the MoPSC cannot envision how a national payphone rate could promote the goal of fair compensation. A payphone provider’s compensation is a function of the payphone’s rate for a local call, its income from other calls, its usage, and its costs. Usage, cost and other compensation will vary from place to place. For example, a payphone’s costs will depend upon

loop or public access line costs, taxes, labor cost and a myriad other details. In addition, “[t]he setting of local coin compensation inevitably involves the allocation of joint and common costs” for which “there is not one economically ‘correct’ method.” Initial Comments of the Commenting States at 7. Fixing one element of this equation without fixing the others would virtually assure **unfair** compensation since high-cost, low-usage payphone service providers would receive less compensation than low-cost, high-usage providers would. If the FCC desires to promote fair compensation, it should leave the authority to establish payphone rates with the regulators that are closest to the details.

II. The States Should Retain Discretion Regarding Public Interest Payphones

The 1996 Act directs the FCC to “determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.” 47 U.S.C. § 276(b)(2). In its NPRM at ¶¶ 76-82, the FCC proposes to promulgate regulations or guidelines regarding public interest payphones (“PIPs”). The MoPSC does not regard a national PIP program as necessary or appropriate. *Accord* Initial Comments of the Commenting States at 9-12.

Traditionally, states have identified the need, defined the solution, and authorized the funding, for PIPs. In Missouri, for example, MoPSC rules require each local exchange company (“LEC”) to provide at least one public payphone in each telephone exchange. 4 CSR 240-32.070(4). The states

are accustomed to dealing with this issue,¹ and are capable of making whatever accommodations the 1996 Act requires without the FCC's assistance

Therefore, the appropriate option from the FCC NPRM in this docket is to defer to the states to establish the definitions and guidelines for this service. NPRM at ¶ 81. The states can take into consideration the local conditions and determine how the public interest payphones should be funded and where they should be located. The FCC should not establish any rules or guidelines which would impede the states' ability to establish reasonable guidelines which consider the local conditions and yet comply with the requirements of the 1996 Act. However, if the FCC insists on mandating a national approach to this issue, then it is incumbent upon the FCC to identify interstate funds to carry out whatever mandate it prescribes. NPRM at ¶ 82.

The MoPSC appreciates the opportunity to comment on these matters.

Respectfully submitted,



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¹For example, in a currently-pending case, TCG St. Louis has asked the MoPSC to waive its rule requiring each certificated LEC to provide at least one payphone in each local exchange. *In re Application of TCG St. Louis*, No. TA-96-345 (Mo. P.S.C. 1996); see also *In re Application of TCG America, Inc.*, No. TA-94-160 (Mo. P.S.C. 1993).

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